

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION FOR)	
TRANSFER NO. 72547 IN THE NAME)	PRELIMINARY ORDER
OF JOYCE PEARSON)	
_____)	

On March 14, 2005, Joyce Pearson ("Pearson") filed an amended application for transfer no. 72547 with the Idaho Department of Water Resources ("IDWR"). Application for transfer no. 72547 proposes a change in the point of diversion for water right nos. 61-371A and 61-372. Notice of application for transfer no. 72547 was published on March 5 and March 12, 2006. Carlene Smith, Dick Anderson, and Robert K. Hall protested the application for transfer.

IDWR conducted a hearing for the contested case on October 11, 2006. Pearson was represented by her son-in-law, Nathan Jones ("Jones"). Pearson and Jones will be referred to hereafter as "Pearson/Jones." Jones ranches and irrigates the place of use identified by water right nos. 61-371A and 61-372. Carlene Smith, Dick Anderson, and Robert K. Hall represented themselves at the hearing.

Following presentation of testimony and exhibits, the hearing officer finds, concludes, and orders as follows:

FINDINGS OF FACT

1. Pearson owns 80 acres of land adjoining both sides of the channel of Little Canyon Creek, located in Elmore County. The 80 acres is identified as a place of use for water right nos. 61-371A and 61-372. The water rights are described as follows:

Water Right 61-371A:

Priority Date:	May 2, 1872
Nature of Use:	Irrigation
Period of Use:	March 15 through November 15
Diversion Rate:	0.80 cfs
Source:	Little Canyon Creek
Points of Diversion:	
T05S, R10E, Sec 8	NWSWSW ¹ NENWSW

¹ In this decision, the public land survey numeric descriptor "1/4" is assumed to follow each two alpha character public land survey locator when the numeric descriptor is missing. For instance, in this example, the full description would be the NW1/4SW1/4SW1/4, Section 8, Township 05 North, Range 10 East, Boise Meridian.

Places of Use:	T05S, R10E, Sec. 19	NENE NWNE SWNE	Acres: 17.0 35.0 28.0
Total:			80

Water Right 61-372:

Priority Date:	May 6, 1892		
Nature of Use:	Irrigation		
Period of Use:	March 15 through November 15		
Diversion Rate:	1.60 cfs		
Source:	Little Canyon Creek		
Points of Diversion:	T05S, R10E, Sec. 8	NWSWSW NENWSW	
Place of Use:	T05S, R10E, Sec. 19	NENE NWNE SWNE	Acres: 17.0 35.0 28.0
Total			80

2. Water was historically delivered to the place of use for water right nos. 61-371A and 61-372 through a ditch approximately one and one-half miles long. In the spring of 2004, the landowner owning the land through which the ditch was constructed plowed-in the ditch delivering Little Canyon Creek water to the Pearson property.

3. The landowner plowed the ditch in to level the property for installation of sprinklers.

4. In 2005, water diverted under water right nos. 61-371A and 61-372 was diverted to the place of use through the Slick Ditch. The point of diversion for the Slick Ditch is located a few hundred feet above the existing points of diversion and is located along the base of hills or bluffs at the edge of property not owned by Pearson.

5. Application to transfer no. 72547 proposes a change in the point of diversion to the NENE, Sec. 19, T05S, R10E. The proposed point of diversion is located within the lands described as a place of use. As a result, the transfer proposes moving the point of diversion from Little Canyon Creek approximately 1½ to 2 miles downstream from the presently described points of diversion. If application for transfer no. 72547 were approved, Pearson would pump water from Little Canyon Creek with a low head centrifugal pump. The pump would lift water into ditches. The ditches would deliver water for flood irrigation of the place of use described by the water rights.

6. The place of use is pasture ground and is not highly productive farm ground. The applicant does not intend to grow alfalfa or a row crop on the property.

7. In the 1½ to 2 mile length of Little Canyon Creek between the existing points of diversion for water right nos. 61-371A and 61-372, and the point of diversion proposed by application for transfer no. 72547, springs arise in the channel of Little Canyon Creek that increase the flows of the creek. These increased flows are diverted by water users diverting water from points of diversion located downstream of the existing points of diversion.

8. The following water rights bear priority dates later than the priority date for water right no. 61-371A (05/02/1872) and earlier than the priority date for water right no. 61-372 (05/06/1892), and authorize diversion of Little Canyon Creek water from points of diversion located below the existing points of diversion of the water rights sought to be transferred:

Basin	Sequence	Priority	TWP	RGE	SEC	QQQ	Rate (cfs)	Owner
61	294	03/15/1886	05S	10E	31	NESENW	1.18	Magic West, Inc.
61	295	11/18/1888	05S	10E	31	SWNE	0.34	Three Island LLC
61	303A	05/02/1892	05S	10E	18	SESE	0.3	Smith, Carlene R.
61	370	05/05/1892	05S	10E	18	SESE	1.4	Smith, Carlene R.

9. The following water rights bear priority dates that are later than the priority date for water right no. 61-372 (05/06/1892) and authorize diversion from points of diversion located downstream from the point of diversion described by the water rights sought to be transferred:

Basin	Sequence	Priority	TWP	RGE	SEC	QQQ	Rate (cfs)	Owner
61	10642	05/08/1892	05S	10E	19	SWSE	2.29	John, Ruby M. or Samuel M.
61	2000A	12/07/1903	05S	10E	18	SESE	1.04	Jones, Roger L.
61	2000B	12/07/1903	05S	10E	8	NENWSW	2.06	Smith, Carlene R.
61	4015	06/01/1910	05S	10E	8	NWSW	4.0	Viner, Richard P.
61	10473	06/04/1910	05S	10E	31	SWNE	0.02	Holloway, Donald S.
61	2223	11/08/1911	05S	09E	35	NWNE	0.24	Hall, Robert K.
61	2044	05/19/1915	05S	09E	35	NWNE	0.36	Hall, Robert K.
61	2046	11/05/1915	05S	09E	36	NWNW	0.34	Farmer, Charles W.
61	4113	06/05/1928	05S	10E	8	NESWSW	0.8	Smith, Carlene R.
61	10474	02/07/1932	05S	10E	31	NENE	0.02	Gardner, Anna & Earl
61	4041A	06/01/1940	05S	10E	30	NESESE	0.02	Coleman, Ethel R.
61	4041B	06/01/1940	05S	10E	30	NESESE	0.01	Tveidt, Don & Cheryl
61	2074	10/27/1942	05S	10E	31	NENE	0.16	White, Mark
61	10116	5/1/1943	05S	10E	30	NESESE	0.03	Garcia, Ann Marie
61	2076	8/16/1944	05S	10E	32	NWNWNW	0.03	State of Idaho
61	2083	6/2/1949	05S	10E	32	NWNW	0.04	Crane, B.E.
61	2084	6/2/1949	05S	10E	32	NWNW	0.1	White, Mark
61	11925	12/31/1949	05S	10E	30	SESE	0.04	Martinez, Joanne
61	2086	7/5/1961	05S	09E	35	NWNE	0.82	Hall, Robert K.
61	2152	3/6/1965	05S	09E	36	SENW	1.36	Anderson, Richard W.
61	7011	11/9/1967	05S	10E	31	NWSENE	0.08	Allen, Cindy/Joel
61	7039	7/29/1968	05S	10E	31	SWNE	0.07	Three Island LLC
61	7575	2/24/1986	05S	10E	18	SESE	0.8	Idaho Fresh Pak Inc.
61	12060	4/6/2004	05S	10E	30	SESE	0.2	Martinez, Joanne

10. Water flowing in Little Canyon Creek at the location of the existing points of diversion nearly always dries-up during the irrigation season. In contrast, Little Canyon Creek always flows at the location of the proposed point of diversion.

11. Holders of water rights listed in the two tables printed above in findings of fact nos. 8 and 9 rely on inflows resulting in gains to Little Canyon Creek for their source of water. These gains cannot presently be diverted by Pearson/Jones at the existing points of diversion for water right nos. 61-371A and 61-372.

12. During base flows in Little Canyon Creek, particularly in drought years, there is insufficient water in Little Canyon Creek at the existing points of diversion for water right nos. 61-371A and 61-372 to satisfy a full flow rate authorized for diversion by water right nos. 61-371A and 61-372.

13. Changing the point of diversion from the existing points of diversion now described by the water rights to the new proposed point of diversion would result in additional water being available to Pearson/Jones under water right nos. 61-371A and 61-372.

14. Jones offered to cease diverting water when water is not available at the historic point of diversion. Jones did not present any evidence as to how flows in Little Canyon Creek would be monitored to determine the amount of water divertible under water right nos. 61-371A and 61-372 at the existing points of diversion, and how the flow diverted from the proposed point of diversion would be administered to prevent an increase in diverted water.

15. Water flowing in Little Canyon Creek during the irrigation season is administered by a watermaster for Water District no. 61-D. The watermaster only adjusts headgates on Little Canyon Creek, however, when he receives a telephone call from one of the water users. Regulation of water rights authorizing diversion of water from Little Canyon Creek is, at best, sporadic.

16. In order to prevent an increase in use of water at the proposed point of diversion, the watermaster would be required to continuously monitor water availability at the location of the existing points of diversion that would no longer be used, and correspondingly regulate the proposed points of diversion by limiting the flow rate diverted at the proposed point of diversion to the amount of water available at the existing points of diversion.

CONCLUSIONS OF LAW

1. Idaho Code § 42-222 states, in pertinent part:

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-202B, Idaho Code, the change will not adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates, and the new use is a beneficial use, which in the case of a municipal provider shall be satisfied if the water right is necessary to serve

reasonably anticipated future needs as provided in this chapter. The director may consider consumptive use, as defined in section 42-202B, Idaho Code, as a factor in determining whether a proposed change would constitute an enlargement in use of the original water right. The director shall not approve a change in the nature of use from agricultural use where such change would significantly affect the agricultural base of the local area.

2. The applicant bears the burden of proof for all of the factors listed in Idaho Code § 42-222.

3. The degree of regulation and administration necessary to prevent enlargement and injury is unreasonable, particularly in light of the failure of the applicant to propose meaningful methods of measurement, control, and administration.

4. If Pearson/Jones were allowed to move points of diversion downstream from the existing points of diversion, use of water by Pearson/Jones would be enlarged, and other water right holders would be injured

5. IDWR can allow the movement of a water right point of diversion downstream in a gaining reach, if all of the junior water rights diverted between the old points of diversion and the mouth of the Snake River are satisfied. The diversion of water from the proposed new point of diversion is in the local public interest if all other water rights are satisfied.

6. Diversion with a pump-enclosed system will eliminate a mile and a half of open ditch through which significant water percolated. The elimination of the ditch and losses will result in conservation of the waters of the State of Idaho

ORDER

IT IS HEREBY ORDERED, that application for transfer no. 72547 is **APPROVED** with the following conditions:

Rights 61-371A and 61-372 when combined shall not exceed the irrigation of 80 acres

Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 61D, Little Canyon Creek.

The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).

At any time a water right describing a point of diversion from Little Canyon Creek located downstream from the NWSWSW of Section 8, Township 05 South, Range 10 East

cannot be fully satisfied because of deficient flows in Little Canyon Creek, the right holder must cease diverting water under this right until all such rights can be satisfied.

This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.

Use of this right is combined with water from King Hill Irrigation District.

All water rights within Basin 61 are from connected sources of water in the Snake River Basin and shall be administered conjunctively.

The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.

Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

Dated this 6th day of March, 2007.

A handwritten signature in cursive script, reading "Gary Spackman", written over a horizontal line.

Gary Spackman